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SUBJECT: UN HUMAN RIGHTS COUNCIL -- REQUEST FOR GUIDANCE ON
REPLACING THE 1503 COMPLAINTS PROCEDURE

[¶1.](#) This is an action request. See para 6.

SUMMARY

[¶2.](#) Informals, led by Swiss Permanent Representative Blaise Godet, were held September 15 to continue discussions on replacing the existing 1503 human rights procedure with a new complaints procedure endorsed by the Human Rights Council. During the course of informals, several delegations appeared willing to cast aside the key limitations on the existing 1503 procedure -- that the allegation be of a "consistent pattern of gross and reliably attested violations of fundamental human rights," and that domestic remedies be exhausted. Questions also arose regarding the need to keep the procedure confidential versus opening it up to greater transparency to the complainants, as well as if/how it should be linked to Universal Periodic Review. There does not appear to be any concerted opposition to a complaint procedure. The difficulty will be reaching agreement on the form it should take and its modalities.

ISSUES FOR DECISION RAISED BY FACILITATOR

[¶3.](#) Swiss Permrep Blaise Godet has been appointed the "facilitator" of an informal working group on the complaint procedure to be adopted by the Human Rights Council (HRC) to replace the ECOSOC-mandated 1503 procedure. Godet referred several times to the mandate under UNGA Resolution 60/251 creating the Council to "assume, review and, where necessary improve and rationalize" Commission mechanisms, including "to maintain . . . a complaint procedure." The first meeting of the group, September 15, worked on the basis of a "checklist" prepared by Godet. (Checklist was emailed to L, DRL, and IO.) The checklist notes key characteristics of the current 1503 procedure, such as that the allegations must state a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms," universality, exhaustion of domestic remedies, and complementarity. The checklist raises questions whether there should be more transparency vis-a-vis the Council and complainants, whether it should avoid overlap with other mechanisms, and how it should be linked (if at all) with the Universal Periodic Review (UPR). It also raises questions about the type and number of bodies that should be involved, and their composition, whether individuals or groups can submit complaints, the number of steps in the procedure, and the powers and types of outcome for the procedure.

REVIEW OF STATES' POSITIONS

[¶4.](#) The discussion on the paper heard many states calling for improvement of the current 1503 mechanism, but with most participants being unable to articulate how that might be

accomplished. Most criticisms of the current mechanism focused on its "politicization," though a number of delegations cautioned that the procedure works relatively well and should not be changed drastically.

-- The EU wants greater transparency for the complainants, impartiality, and objectivity in the process. It had not, however, agreed among its members on any specific points or recommendations.

-- China asserted that the original purpose of 1503 was to address country situations first in a confidential way, but that it had evolved into a kind of individual complaints procedure. At the same time, country situations eventually by-passed the 1503 process and went right to public airing in the Commission. China would not tinker with the current structure and admissibility requirements, but would return the procedure to what China asserts is its original role as the gatekeeper for consideration of country situations in the public sessions of the Council. Pakistan largely agreed.

-- Russia said it had no strong interest in the 1503 procedure, but given the mandate from the UNGA to maintain a complaints mechanism, supported keeping the existing procedure with few changes. It called for better handling of communications by the Secretariat, including more Russian translators and better tracking of correspondence. Russia underlined the importance of the confidentiality of the procedures, arguing that this is a unique aspect of 1503 which allows states quietly to follow through with implementation.

-- India, Japan, Colombia, Indonesia, the United States, and others also stated clearly that the admissibility requirements of the current procedure must be maintained in order to avoid a massive flood of complaints. Argentina, Chile, and Peru asserted, however, that such requirements were outmoded and created unfair obstacles to the ability of complainants to seek redress. They would create a straight-forward individual complaints procedure with tough remedies, including compensation for violations. In addition, the Czech Republic and Norway called into question the necessity of a requirement for a "consistent pattern of gross . . . violations," asserting that such a standard is political not legal and therefore is unnecessary for the Council to consider human rights violations.

-- Several delegations complained that the OHCHR Secretariat had a record of losing 1503 complaints and that many applicants never learned the outcome of their submission. The Secretariat stated that it had improved its handling of the communications over the years, and had developed a system for minimizing overlap with other mechanisms. To the extent that the same claim is filed through more than one procedure, the Secretariat now will only take it up in one. According to the Secretariat duplicative filings have been reduced to less than 5 percent of the total.

-- Peru and Argentina, with scattered support, argued that the political role of the Working Group on Situations should be abolished, with the entire process being turned over to the independent experts, who could meet year-round under the new Council structure, and make recommendations to the full Council. Russia, China, Iran, India, and Japan maintained the crucial role the intergovernmental committee plays in vetting complaints before they get to the full Council.

CONSULTATIONS TO CONTINUE

15. Godet was unable to reconcile the various views, but stated that it was clear the existing 1503 procedure must be the basis for further discussions, and that delegations seemed to want to improve it where possible. Peru maintained that one could not rule out other models as well. Godet ended by stating that he would be in touch with delegations during the Council session and come back to the informal working group with a revised checklist.

ACTION REQUEST

¶16. Department is requested to provide guidance to Mission on USG goals for a complaints mechanism in the Council, focusing first on the points in Godet's checklist. What aspects of the 1503 procedure may be improved upon? Which aspects must be maintained? Department is also requested to provide some sense of how the complaints mechanism might relate to other mechanisms, including those of existing treaties and the nascent UPR.

COMMENT

¶17. The Department and Mission devote considerable resources every year addressing mostly frivolous 1503 complaints against the United States. The political nature of the Working Group on Situations has been a source of frustration when regional group balance resulted in cases being dismissed or forwarded to the Commission based on regional considerations rather than their merit. Nonetheless, Mission believes that the 1503 procedure has been manageable while providing in several cases for the Commission to take action to address pressing human rights situations. With that in mind, Mission Geneva would caution against opening it up to a revision that could result in either an unmanageable flood of communications or an overly restrictive system that would limit the Council's ability to address serious country situations.

TICHENOR